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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,391	08/09/2001	Ronald E. Nichols	287122-00004-2	5144

7590 01/06/2004
Debra Z. Anderson
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EXAMINER

DANG, THUAN D

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 01/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/925,391

Applicant(s)

NICHOLS ET AL.

Examiner

Thuan D. Dang

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 18 November 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see the attachment.
6. ☒ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-27.Claim(s) withdrawn from consideration: 28-32.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☐ Other: _____

Thuan D. Dang
Primary Examiner
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The Attachment

A Declaration by Doctor Levine and inventor Cooke filed on 11/18/2003 is noted. However, it is denied to be considered since an affidavit was held to be untimely when filed after final rejection. *In re Deters* 185 USPQ 644 (CCPA 1975).

The argument that the metals found in bentonite are not free (elemental state), but in an oxidized state is not persuasive since applicants do not claim the form of the metal dust (free or oxidized). Therefore, there is no difference between the claimed metal and the metal in the clay of Gi.

The argument that claims 7-12 are not taught by Gi is no persuasive since as discussed in the previous rejection, claims 7-12 are obvious.

The argument that Gi uses much higher temperature as in column 1, lines 14 is not persuasive since Gi uses different phases each of which has different temperature (column 2, lines 30-51).

The argument that Roy discloses that a sub atmospheric pressure affects the yield of liquid and solid product (col. 1, lines 65-68) is correct since as taught by Roy, one having ordinary skill in the must recognize that pressure of the process has an affect to the amount of solid or the liquid product. Therefore, It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Gi process as taught by Roy to select an appropriate pressure such as the applicants' claimed pressure since pressure is recognized by Roy as an affective variables.

The argument that Solbakken does not teach a temperature as claimed and using a catalyst is not persuasive since these are taught by G.

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The argument that Gi does not disclose using three phases instead of describing at what temperature the various reactions will occur is not persuasive since as discussed in the previous rejection, Gi discloses clearly on column 2, lines 30-51 that the process has three different phases which is operated at three different temperature, namely 100-200°C, still 500°C, and 500-600°C.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuan D. Dang whose telephone number is 703-305-2658. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 703-308-6824. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Thuan D. Dang
Primary Examiner
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A handwritten signature in black ink, appearing to be 'Thuan D. Dang', written over a horizontal line.

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December 22, 2003